

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

DELAQUAN D. HENDERSON,

Plaintiff,

Case No. 3:22-cv-224

vs.

DEPARTMENT OF EDUCATION, *et al.*,

District Judge Michael J. Newman

Magistrate Judge Caroline H. Gentry

Defendants.

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**ORDER: (1) ADOPTING THE REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE (Doc. No. 11); (2) DISMISSING PLAINTIFF'S CLAIMS WITHOUT PREJUDICE; (3) DENYING A CERTIFICATE OF APPEALABILITY; (4) CERTIFYING THAT ANY APPEAL WOULD BE OBJECTIVELY FRIVOLOUS AND FINDING THAT *IN FORMA PAUPERIS* STATUS SHOULD BE DENIED ON APPEAL; AND (5) TERMINATING THIS CASE ON THE DOCKET**

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This *pro se* civil case is before the Court on the Report and Recommendation issued by United States Magistrate Judge Caroline H. Gentry (Doc. No. 11), to whom this case was referred pursuant to 28 U.S.C. § 636(b). Plaintiff's complaint was subject to an initial review because he was granted leave to proceed *in forma pauperis* under 28 U.S.C. § 1915. *See* Doc. No. 10. Upon initial review, Judge Gentry recommended that Plaintiff's complaint be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1). Doc. No. 11 at PageID 41.

Judge Gentry explained that Plaintiff brings claims against the federal government, which has sovereign immunity. *Id.* at PageID 40. Thus, Plaintiff has the burden to demonstrate that the federal government has expressly waived its sovereign immunity. *Id.* at PageID 41. Judge Gentry reasoned that because Plaintiff has not identified a waiver of sovereign immunity, this Court lacks jurisdiction over Plaintiff's claims and they must be dismissed without prejudice. *Id.*

Plaintiff did not object to Judge Gentry's Report and Recommendation, and the time to do so has passed. Upon careful *de novo* consideration of the foregoing, the Court determines that the Report and Recommendation should be adopted. *See Ernst v. Rising*, 427 F.3d 351, 367 (6th Cir. 2005) (holding that dismissal without prejudice was proper where the claims were barred in federal court by sovereign immunity); *S & M Brands, Inc. v. Cooper*, 527 F.3d 500, 514 (6th Cir. 2008) (same).

Accordingly, the Court: (1) **ADOPTS** the Report and Recommendation in full (Doc. No. 11); (2) **DISMISSES** Plaintiff's claims **WITHOUT PREJUDICE**; (3) **DENIES** Plaintiff a certificate of appealability; (4) **CERTIFIES** that any appeal would be objectively frivolous and **FINDS** that Plaintiff should be denied *in forma pauperis* status on appeal; and (5) **TERMINATES** this case on the Court's docket.

**IT IS SO ORDERED.**

March 23, 2022

s/ Michael J. Newman

Hon. Michael J. Newman  
United States District Judge